APPEAL NO. 040628
FILED MAY 11, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on February 5, 2004, with the record closing on February 18, 2004. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, includes major depressive disorder. The appellant (carrier) appealed, arguing that the evidence did not support the hearing officer's findings and contending that the hearing officer erred in not allowing the record to remain open to allow Dr. J to testify in person and in not approving the carrier's request to take deposition on written questions of Dr. K. The respondent (claimant) responded, urging affirmance and contending that the carrier failed to show how the evidentiary determinations complained of were reversible error.

DECISION

Affirmed.

We first address the carrier's evidentiary objections. The carrier contends that the hearing officer erred in failing to allow the record to remain open to allow Dr. J to testify in person. Although the record was held open to allow both parties an opportunity to obtain a prior deposition of the claimant, a review of the record reflects that the portion of the hearing in which testimony was presented was closed and closing arguments began after waiting almost 40 minutes to allow Dr. J to arrive. Written medical reports were in evidence from Dr. J. To obtain a reversal on the basis of admission or exclusion of evidence, it must be shown that the ruling admitting or excluding the evidence was error and that error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been stated that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We find no abuse of discretion in the hearing officer's refusal to continue to hold the record open to allow Dr. J to testify in person. We conclude that the claimant has not shown that the error, if any, in the exclusion of the complained-of evidence amounted to reversible error.

The carrier asserts in its appeal that the hearing officer erred in denying its request for a deposition on written questions to Dr. K. A review of the record reflects that the objection at the CCH was to the hearing officer's refusal to allow a request for a deposition on written questions to Dr. B rather than Dr. K. At the CCH, the hearing officer stated that she found most of the questions were not relevant and some of the questions were overbroad and denied the request. We review the hearing officer's rulings on the issuance or refusal to allow written deposition questions on an abuse-of-

discretion standard. We note that various medical records and reports from Dr. B were in evidence. We find no merit in the carrier's contentions that the hearing officer committed reversible error in her evidentiary rulings.

The parties stipulated that the claimant sustained a compensable injury on _____. At issue was whether the compensable injury included major depressive disorder. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer determined that medical records from Dr. K, Dr. B, and Dr. J support that the claimant's depression began as a result of the compensable injury as a result of chronic pain and loss of function and that the evidence established that the claimant's depression was "severe and/or major that flowed naturally and directly from the compensable injury." We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **SENTRY INSURANCE, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

TREVA DURHAM
1000 HERITAGE CENTER CIRCLE
ROUND ROCK, TEXAS 78664.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge